Another view is that the bankruptcy proceedings immediately sever the relation of landlord and tenant. *In re Jefferson*, 93 Fed. Rep. 948 [1899]; *Bray* v. *Cobb*, 100 Fed. Rep. 270 [1900]. This is obviously to create a rule as to leases which does not apply to other property, and is to disregard the fact that a lease is a form of conveyance rather than a mere contract. Moreover, this view is scarcely less objectionable as a matter of convenience to the parties to the lease. It may be that the tenant is in such a situation that, out of his earnings or other after-acquired property, he can pay his rent. In such a case it seems unjust to force him out of the premises, and it may equally harm the landlord to deprive him of a profitable lease, with no chance to secure damages from the estate.

To obviate these difficulties the English bankruptcy acts of 1869 and 1883, and the Massachusetts insolvent law, which preceded the present federal act (Mass. Pub. Stats. c. 157, sect. 26), had special provisions with regard to leases. They free the bankrupt from all personal liability, but provide that when the trustee disclaims the lease the lessor may prove the damages caused by the surrender as a debt against the bankrupt lessee's estate. Such damages would in general be the difference between the value of the lease and the then market value of the premises. *Ex parte Blake*, 11 Ch. D. 572. These provisions are clearly in the right line, protecting the lessor from entire loss, and releasing the bankrupt from future liability. It might be well to allow the tenant, on the trustee's disclaiming, to continue the lease on proof of his ability to pay the rent, letting the lessor prove for the amount of his loss if the bankrupt as well as the trustee disclaims the lease. Such a provision would fully protect both parties, and would do away with the present unsatisfactory conditions. It is much to be regretted that the subject was not dealt with in the act of 1898.

INJUNCTIONS AGAINST CONTINUING NUISANCES. — The interesting question whether an injunction is granted as a matter of course in the case of a continuing nuisance, or whether it is within the discretion of the court to deny this relief, if the resulting benefit to the plaintiff would be slight compared with the loss to the public or the individual, was suggested in a recent case. *Riedeman* v. *The Mt. Morris Co.*, New York Law Journal, Dec. 18. The plaintiff, who owned a tenement house in a business section of the city of New York, prayed that the defendant might be enjoined from so operating his electric lighting plant as to injure the plaintiff's premises by vibration and soot. The court held that the evidence of a nuisance was not conclusive, and further that as an injunction would cause serious injury to the defendant and to the public at large, with but a relatively slight benefit to the plaintiff, the latter should be denied injunctive relief, and accordingly remitted him to his remedy at law. The first ground clearly justifies the decision. As to the second there is much dispute. In England an injunction seems to be granted as a matter of positive right in the case of a continuing nuisance. *Broadbent* v. *The Imperial Gas Co.*, 7 DeG. M. & G. 434, 462. A number of decisions in America are to the same effect. *Hennessy* v. *Carmoney*, 50 N. J. Eq. 616. But New York has denied the relief where the injury was nominal, *Gray* v. *Manhattan R. Co.*, 128 N. Y. 499, and there are a number of *dicta* and a few decisions which allow the court to refuse an

injunction where the complainant's damage is relatively small, even though it be substantial. *Doughty* v. *Warren*, 85 N. C. 136.

The equitable rule has long been recognized that an injunction will be granted to prevent irreparable injury or a multiplicity of actions. "Irreparable injury" is a term not clearly defined, but it seems that one who is continuously disturbed in the enjoyment of his property may be considered irreparably injured. The inconvenience of a multiplicity of actions could only be prevented by injunction, as nuisances of this character are seldom of so permanent a nature as to justify the granting of future damages by a court of law. It is sometimes stated that the granting of any injunction lies within the discretion of the court, yet such discretion, by the better view, ought to be employed only in considering whether a case is clearly within an equitable rule, and not in deciding whether a definite equitable rule ought to be applied to facts clearly within its scope.

In at least three classes of cases, however, the result of granting injunctive relief may seem undesirable. In the first class are nuisances caused by businesses, which, like that in the principal case, are vitally important to the public, and must be located in cities where they necessarily disturb adjacent owners. In the second are nuisances caused by the damming or pollution of rivers by mill-owners. In the third, nuisances caused to houses built around factories subsequent to their erection, which possibly could not have been foreseen. But if an exception in such cases were recognized to the general equitable doctrine, no practical rule could be framed to determine the cases within its scope. On the one hand disturbances caused by nuisances cannot be adequately measured in damages; and on the other hand each court would have its own view as to what constitutes a loss to the public. Again, the evils of allowing injunctions may be readily avoided in the first two classes of cases by legislative enactments permitting the nuisance on payment of compensation. In the third class legislation, though possible, is not so feasible. Yet as the factory owners had an opportunity to protect themselves against any possible trouble by building only where they could buy up the adjoining land before building, if they have failed in this, it is perhaps not a great injustice that they should suffer, even though the public to some extent must suffer with them. In view, then, of the definite equitable rules above stated, and the practical difficulties in overriding them, it seems best for the courts to allow an injunction whenever a legal right appears, and leave any changes necessary to legislation.

OUSTER FROM PARTICULAR FRANCHISES BY QUO WARRANTO PROCEEDINGS. — There has been some doubt whether, in *quo warranto* proceedings, a defendant can be ousted from particular franchises alleged to be incidental to, or a part of, a valid franchise or office. Some courts have held that if the defendant can show a valid title to one office or franchise, *quo warranto* is not the proper remedy to test his right to do certain acts alleged to be a part of the functions of that office or franchise. *People* v. *Whitcomb*, 55 Ill. 172. But the true rule seems to be that where the acts in question amount to a franchise distinct from the one lawfully exercised, the authority to perform those acts must be shown by the defendant when called upon by the sovereign. *People* v. *Ins. Co.*, 15 Johns.